

This action was brought under the Fair Labor Standards Act (FLSA) and New York State labor laws. In the Complaint, plaintiff Jonathan Elliott requested that the lawsuit be designated as a collective action under the FLSA and that a class be certified for the state law claims. Having been informed by the parties that they had reached a settlement agreement, Magistrate Judge Peck dismissed this action with prejudice and without costs by Order of January 28, 2008. The parties have also submitted for the Court's approval a stipulation of dismissal with prejudice as to plaintiff Jonathan Elliott and without prejudice as to the other members of this alleged putative class action and collective action. Generally, however, employees' rights under the FLSA cannot be waived pursuant to private settlements. See D.A. Schulte, Inc. v.

Gangi, 328 U.S. 108, 116 (1946). Rather, settlement agreements must either be supervised by the Secretary of Labor or judicially approved so as to ensure that the employees' rights are protected. See 29 U.S.C. § 216(c); D.A. Schulte, 328 U.S. at 113 n.8.

Moreover, the settlement of any class action or collective action lawsuit must be judicially approved, even when settlement is reached before a class is certified. "When a settlement is negotiated prior to class certification, as is the case here, it is subject to a higher degree of scrutiny in assessing its fairness." D'Amato v. Deutsche Bank, 236 F.3d 78, 85 (2d Cir. 2001). The special concern that absent class members may be prejudiced when a putative class action lawsuit is settled before the class is certified exists as well in the context of putative collective actions under the FLSA, even if the latter requires that plaintiffs opt into the class.

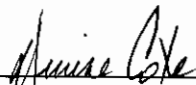
The district court must review a class action settlement "to ensure its fairness, adequacy and reasonableness, and that it was not a product of collusion." Id. (citation omitted). Fairness is determined "by examining the negotiating process leading up to the settlement as well as the settlement's substantive terms." Id. Because this action was brought under the FLSA as a putative collective action, and as a putative class action under New York State law, it is hereby

ORDERED that the parties shall make submissions to the Court in support of their settlement agreement no later than March 14, 2008.

IT IS FURTHER ORDERED that the Order of Dismissal On Consent of January 28, 2008 is vacated. The Clerk of Court is directed to reopen this case.

SO ORDERED:

Dated: New York, New York
February 11, 2008



DENISE COTE
United States District Judge

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